

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Karla C.,

Case No. 2010071125

Claimant,

v.

Inland Regional Center,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 17, 2011.

The Inland Regional Center (IRC) was represented by Debra Martinez, Consumer Services Representative, Appeals and Fair Hearings.

Karla C. (Karla C. or claimant) was represented by her mother, Martha C.

The matter was submitted on March 17, 2011.

ISSUE

Is Karla C. eligible for regional center services under the Lanterman Act because as a result of a diagnosis of mental retardation? If so, does that condition constitute a substantial handicap?

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 15, 2010 claimant filed a Fair Hearing Request to refute IRC's determination that she was not mentally retarded and to establish that she was therefore eligible for regional center services.

2. On March 17, 2011, the record was opened, jurisdictional documents were presented, documentary evidence was received, sworn testimony and closing arguments were given, the record was closed, and the matter was submitted.

Diagnostic Criteria

3. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) established diagnostic criteria used to determine mental retardation and learning disabilities. In order for there to be a diagnosis of mental retardation, the individual must:

(1) have "significantly subaverage intellectual functioning (an IQ of approximately 70 or below)¹;

(2) have concurrent deficits or impairments in present adaptive functioning (the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(3) have the onset of the condition before the age of 18 years.

The DSM also established criteria for diagnosing a "learning disability." In order to have that diagnosis, the "individual's achievement on individually administered, standardized tests in reading, mathematics, or written expression" must be "substantially below that expected of age, schooling, and level of intelligence." The learning problems must "significantly interfere with academic achievement or activities of daily living that require reading, mathematical, or writing skills." "Substantially below" is usually defined as a discrepancy of more than two standard deviations between achievement and IQ.

¹ "Mild Mental Retardation" is diagnosed with an IQ level from "50-55 to approximately 70."

Evidence Presented At Hearing

4. The San Gabriel/Pomona Regional Center referred claimant to Victor Sanchez, Ph.D., for a psychological evaluation. Dr. Sanchez performed an examination on February 5, 2005, when claimant was almost three years old. In the history, it was represented that claimant was adopted and that her biological mother reportedly had used significant amounts of drugs and alcohol while pregnant. Claimant's birth rate was approximately 2 1/2 pounds. The regional center funded in-home stimulation services. Cognitive testing revealed overall cognitive skills present at the upper end of the average range. Adaptive skills appear to fall in the average range. Based on his evaluation, Dr. Sanchez diagnosed claimant with expressive language disorder and recommended that she receive appropriate school placement at age three and that she be referred for a hearing evaluation to ensure that an impairment was not contributing to her speech delays.

5. Frances Mungia, Psy. D., an IRC psychological assistant, conducted a psychological assessment on August 15, 2007, when claimant was five years, four months old. Cognitive testing involved the use of the Wechsler Preschool and Primary Scale of Intelligence-III, which revealed a verbal score of 70, a performance score of 77, and a scaled score of 71. The Vineland Adaptive Behavior Test reported a composite score of 77. Claimant's IQ fell within the borderline range, and her overall intellectual adaptive functioning did not suggest a diagnosis of mental retardation. Her adaptive functioning scores were scattered from the significantly delayed to the average range. The diagnostic impressions were Axis I: rule out language disorder, with no Axis II diagnosis. Claimant was determined to be eligible for regional center services.

6. Claimant self referred to clinical psychologist Gabrielle du Verglas, Ph.D., for a psychological evaluation on March 8, 2008, and on April 12, 2008. Claimant's IQ scores on the Wechsler preschool and primary intelligence scale-III included a verbal score of 55, a performance score of 75, and a full scale score of 65. Claimant's Vineland Adaptive Behavior Scales II scores were in the average to moderately low range. The Axis I diagnosis was rule out fetal alcohol syndrome, the Axis II diagnosis was mild mental retardation, the Axis III diagnosis was prenatal exposure to alcohol and drugs, and the Axis IV diagnosis was moderate stressors. It was recommended that claimant be referred for special education services because her IQ scores of fell in the mild range of mental retardation, that she obtain an occupational therapy evaluation and speech and language services, and that she undergo testing because of her fetal alcohol syndrome.

7. IRC's expert witness, Sara Hibbs, Ph.D., testified that because of those scores, IRC determined that claimant was eligible for services as a result of a diagnosis of mental retardation, and that it was recommended that cognitive testing be performed and reviewed in one year.

8. Two years later, on April 29, 2010, Dr. Mungia performed subsequent testing. Claimant's IQ scores were verbal 65, perceptual reasoning 84, working memory 65, and processing speed 94. Because of the scatter in those scores, a full scale IQ score could not be given. Claimant's Vineland scores were in the moderately low to low range. Claimant's cognitive abilities were determined to fall in the significantly delayed to average range with her adaptive functioning skills in the low to moderately low adaptive range. IRC determined claimant was ineligible for regional center services because she did not have a diagnosis of mental retardation. IRC recommended that claimant continue to participate in special education and speech and language therapy.

9. In response thereto, claimant again self referred for a psychological evaluation. Dr. Verglas performed an examination on December 4, 2010. Claimant's IQ testing on that date demonstrated a verbal score of 55, a perceptual reasoning score of 75, a working memory score of 54, a processing speed score of 94. Dr. Verglas assessed a full scale score of 62. These scores ranged within the significantly delayed, borderline and average ranges. Claimant's adaptive reasoning scores fell within the significantly delayed range. Dr. Verglas diagnosed claimant with mild mental retardation, and he recommended an evaluation for fetal alcohol syndrome, speech and language therapy, a mental-health referral, adaptive skills training, and a reevaluation in three years.

10. Dr. Hibbs criticized Dr. Verglas's 2010 full scale assessment because of the wide scatter on the IQ test. Dr. Hibbs was also critical that an IQ test was conducted so close in time to the IRC test because "test effects" can result in an inaccurate representation of an individual's cognitive abilities. IRC argued that while claimant receives special education services, her entitlement to school services is not determinative of regional center eligibility, which must be based on the DSM-IV diagnosis of mental retardation.

11. Claimant's mother testified regarding claimant's limitations. She was critical of IRC's testing, claiming that Dr. Mungia provided answers to her daughter during the testing. She believed that her daughter was eligible for regional center services based on a diagnosis of mental retardation as was documented in Dr. Verglas's report.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

“The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.”

4. Welfare and Institutions Code section 4512, subdivision (a) defines “developmental disability” as follows:

“‘Developmental disability’ means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.”

5. California Code of Regulations, title 17, section 54000 provides:

“(a) ‘Developmental Disability’ means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.”

6. California Code of Regulations, title 17, section 54001 provides:

“(a) ‘Substantial disability’ means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;

(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.”

Appellate Authority

7. The purpose of the Lanterman Act is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.” (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

8. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

Evaluation

9. The Lanterman Act and the regulations enacted under the Act establish specific criteria that a claimant must meet to qualify for regional center services. Claimant introduced two reports from Dr. Verglas which stated that claimant was diagnosed with mental retardation in 2008 and again in 2010. While Dr. Hibbs testified about “test effects”; her testimony established that these test effects “can” alter cognitive testing results, but no

evidence was introduced that demonstrated that “test effects” altered claimant's test results. No evidence established that Dr. Verglas’s conclusions and opinions were any less valid than Dr. Mungia’s opinions and conclusions. In fact, they are more compelling because they involve the most recent testing. Absent any evidence that Dr. Vergas’ testing and reports were not valid, the testing constituted the kind of evidence on which a trier of fact can reasonably rely. Dr. Vergas’s 2010 psychological assessment established that claimant has mild mental retardation, and thereby qualifies for regional center services. It has resulted in a significant handicap.

ORDER

Claimant Karla C.’s appeal from the Inland Regional Center’s determination that she is not eligible for regional center services and supports is granted. Claimant is eligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

DATED: April 5, 2011

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.